IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6092 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ABDUULSHARIF ANWARHUSSAIN SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR SJ DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 08/08/2000

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 27-1-2000 passed by the Police Commissioner, Ahmedabad and he has been declared as a dangerous person.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short

`the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, statements of two independent witnesses whose identity has not been disclosed have been recorded on 24-1-2000 and 25-1-2000 respectively and same has been verified on 27-1-2000 and order of detention has been passed on same day, i.e. on 27-1-2000. Learned APP,Mr.S.J.Dave has fairly admitted the same. It has been held in a judgment reported in 1993 (2) G.L.R. 1659 in the case of Kalidas Chandubhai Kahar Vs. State of Gujarat and Ors. more particularly at para 6 as under:

> "At the time of exercising the privilege under Sec.9(2) of PASA, a balance is required to be struck between the public interest on the one hand and the right of the detenu to make a representation under Art.22(5) of the Constitution on the other. If the statements of the witnesses are to be relied on, they must be genuine statements of the real persons. The detenu would like to verify as to whether these persons are fictitious persons or not and/or whether their statements are bogus statements or not ? Unless the detenu knows the names and addresses of the persons who have given the statements, he cannot verify the aforesaid facts and if the names and addresses along with the contents of the statements are supplied to the detenu, he can have full opportunity to verify the position and make an effective representation on that basis. As against this, there is a provision under sec.9(2) carved out on the basis of Art.22(5) of the Constitution which provides that nothing in sub-sec. (1) shall require the authority making such order

> to disclose facts which it considers to be against the public interest to disclose. Therefore, it is the duty of the detaining authority to strike a balance as stated above, that in the public interest, the names and addresses of the witnesses could not be disclosed. This should not be treated as an idle formality as it affects the public interest on the one hand and the right of the detenu on the other (para 6)".

4. In the instant case, statements of the witnesses have been recorded on 24-1-2000 and 25-1-2000 respectively and verification of the same has been done on 27-1-2000. It is to be noted that order of detention has also been passed on 27-1-2000 and, therefore, right of making an effective representation by the detenu under Sec.22(5) has been affected. Therefore, order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. The petition is allowed. The impugned order of detention dated 27-1-2000 passed against the detenu is hereby quashed and set aside. The detenu-Abdulsharif Anwarhussain Shaikh is set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute with no order as to costs.

(R.P.DHOLAKIA,J.)

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